

**Small Claims
Final Determination
Findings and Conclusions**

Petition: 45-004-12-1-5-00036
Petitioner: Elkhart Rentals, LLC
Respondent: Lake County Assessor
Parcel: 45-08-03-383-024.000-004
Assessment Year: 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated the 2012 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on February 12, 2013. The PTABOA issued notice of its final determination on September 12, 2014. Petitioner then timely filed its Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on October 3, 2016. Neither the ALJ nor the Board inspected the property.
4. Chris Schaap, member of Elkhart Rentals, LLC, was sworn as a witness for the Petitioner. Robert Metz, Lake County Hearing Officer, and Edward Gholson, Calumet Township Chief Deputy Assessor, were sworn as witnesses for Respondent

Facts

5. The subject property is a two-family dwelling located at 830 Georgia Street in Gary.
6. For 2012, Respondent determined a total assessment of \$98,400 (land \$7,100 and improvements \$91,300). Petitioner requested an assessed value of \$11,160.

Record

7. The official record contains the following:
 - a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1:	Appraisal by Roy Gouwens
Petitioner Exhibit 2:	2012 property record card (“PRC”)
Petitioner Exhibit 3:	Annual Adjustment of Assessed Values Fact Sheet
Respondent Exhibit 1:	PRC for subject property
Board Exhibit A:	Form 131 petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

Burden

8. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
9. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
10. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
11. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

12. The assessed value increased from \$92,800 in 2011 to \$98,400 in 2012, which is approximately 6%. Respondent, therefore, has the burden of proof for 2012.

Summary of Parties' Contentions

13. Respondent's case:
- a. Respondent contends that there was no information available as to whether the property was actually rentable in 2012. However, Respondent contends using a value of \$750 per month per unit would result in an approximate value of \$60,000 for the year at issue. Accordingly, Respondent agrees to lower the 2012 value to the 2015 assessed value of \$61,900. *Metz testimony; Gholson testimony.*
 - b. It was discovered during a recent visit to the property that it has been completely vandalized and that the current owner, Mr. Vicari, has not performed any repairs. Respondent also questions Petitioner's appraiser's reliability and some of the processes employed in his appraisal. *Gholson testimony; Metz testimony.*
15. Petitioner's case:
- a. Petitioner contends the property is over-assessed. Petitioner submitted an appraisal prepared by Roy Gouwens, a certified residential appraiser. Mr. Gouwens prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Gouwens estimated a value of \$12,000 as of March 1, 2011. *Schaap testimony; Pet'r Ex. 1.*
 - b. In an attempt to trend the 2011 appraised value to the 2012 valuation date, Petitioner applied the market adjustment value of .93 shown on the 2012 property record card. Applying the .93 value to the \$12,000 appraisal estimate results in a proposed value of \$11,160 for 2012. *Schaap testimony; Pet'r. Ex. 2.*
 - c. Petitioner contends that he purchased the property, along with other properties, at a tax sale for approximately \$300 to \$500. When purchasing such properties at a tax sale, Petitioner is not afforded an opportunity to see the interior of the properties. Petitioner contends the property at issue was a "junk" house and beyond repair, so he deeded it to Mr. Vicari for nothing. In Petitioner's opinion, the house is over-valued at the \$12,000 appraised value. *Schaap testimony.*
 - d. Petitioner does not know if the appraiser made an adjustment for the condition of the house and, in his opinion, should have used REO properties as comparables. *Schaap testimony.*

ANALYSIS

16. The Board finds that the assessed value should be reduced for 2012. The Board reached that decision for the following reasons:
- a. Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
 - c. There is a separate statute, however, regarding the value of certain rental properties such as the one at issue. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the gross rent multiplier (“GRM”) method “is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units...”
 - d. In this case, Respondent testified that based on an average rent of \$750 per month, the value of the property would be close to \$60,000. Respondent’s calculation could be perceived as an attempt to apply the GRM method. However, Respondent presented no evidence to support the rent and no calculation of an actual GRM value. Respondent had the burden of proof but conceded to a reduction to \$61,900.
 - e. Petitioner, however, requested a further reduction to the assessed value. Petitioner offered a USPAP compliant appraisal in which a certified appraiser valued the subject property at \$12,000 as of March 1, 2011. The Board has regularly found that appraisals performed within a year of the relevant valuation date are temporally sufficient to make a prima facie showing of a property’s true tax value.

- f. Petitioner contends the 2011 appraised value should be trended to the March 1, 2012 valuation date. Petitioner attempted to trend the appraised value to the 2012 valuation date by applying the market adjustment value of .93 shown on the 2012 PRC.
- g. While the market adjustment appearing on the PRC is applied to the cost of the improvements determined under the Guidelines, it appears that the factor in this case is not reflective of the overall annual trending factor for 2012 because the total assessed value increased from 2011 to 2012. Furthermore, Petitioner provided no explanation about how or why the market adjustment value appearing on the PRC should be determinative of the overall assessment.

CONCLUSION

- 17. Respondent had the burden to prove that the 2012 assessed value was correct. Respondent conceded the value should be reduced to \$61,900. Petitioner presented a USPAP compliant appraisal which valued the subject property at \$12,000 for 2012. Petitioner requested a lower value than that of the appraisal but failed to present probative evidence in support of that reduction.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2012 assessed value should be changed to \$12,000.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.